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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/088,408	03/19/2002	Jan F. Van Baar	US 19005	5497

7590

02/10/2006

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Elkton, MD 21921

EXAMINER
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LU, C CAIXIA

ART UNIT	PAPER NUMBER
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1713

DATE MAILED: 02/10/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/088,408

Applicant(s)

VAN BAAR ET AL.

Examiner

Caixia Lu

Art Unit

1713

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 20 December 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 28-50 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 28-50 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Request for Continued Examination***

1. The request for continued examination (RCE) under 37 C.F.R. §1.114 is acceptable. An action on the RCE follows.
2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

### ***Claim Rejections - 35 USC § 112***

3. Claims 28-50 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In at least claims 1, 43, 44, 50, the selective formats of various groups, “selected from A, B, C,..., and X”, are improper in that it is not clear whether the individual members in the group are selected in alternatives only or in both alternatives and combinations. In general, when the members of in the group are individually chosen as alternatives, the format, “selected from A, B,..., or X” or “selected from the group consisting of A, B,..., and X”, should be used; and when the members in the group are chosen both in alternatives and combinations, the format “selected from the group consisting of A, B,..., X, and mixtures thereof” should be used. See MPEP 2173.05 (h).

Applicants are requested to amend the selective formats of the instant claims according to the above guidance.

***Double Patenting***

4. Claims 28-50 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-7 and 11-17 of U.S. Patent No. 5,849,653. Although the conflicting claims are not identical, they are not patentably distinct from each other because the scope of the catalyst compositions overlaps with that of the claims of the patent. In claim 11 of the Patent, component (A) of the Patent overlaps with component (A) of the instant claims when A of formula (I) of the instant claims has the same meaning as Cp, and component (B) of the Patent overlaps with component (B) of the instant claims when  $w=3$  or  $2$  and  $z=0$  or  $1$  respectively and  $(CH_2-CR^4R^5R^6)$  is  $(CH_2-CHCH_3Ph)$  (2-phenylpropyl of col. 5, lines 23-24) in the formula of (II) of the Patent. For example, the tris(2-phenylpropyl)aluminum and bis(2-phenylpropyl)aluminum hydride meet the limitations of component (B) of the instant claims.

5. Claims 28-50 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-5 and 9 of U.S. Patent No. 6,136,932. Although the conflicting claims are not identical, they are not patentably distinct from each other because the scope of the catalyst composition of the instant claims overlaps with those of the claims of the patent for the similar analysis as shown above.

***Claim Rejections - 35 USC § 103***

6. Claims 28-50 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dall'Occo et al. (US 6,136,932 and US 5,849,653 respectively).

Dall'Occo's teaching is relied upon as shown above.

Therefore, it would have been obvious to a skilled artisan at the time the invention was made to employ Dall'Occo's teaching to provide a catalyst composition comprising a metallocene catalyst and a cocatalyst such as tris(2-phenylpropyl) aluminum and bis(2-phenylpropyl)aluminum hydride because such is within the generic disclosure of the reference and all of the embodiments of the reference are expected to work and in the absence of any showing of criticality and unexpected results.

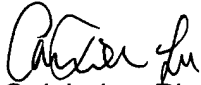
***Response to Arguments***

7. Applicant's arguments with respect to the rejections of the record have been considered but are moot in view of the new ground(s) of rejection.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Caixia Lu whose telephone number is (571) 272-1106. The examiner can normally be reached from 9:00 am to 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful and the matter is urgent, the examiner's supervisor, David Wu, can be reached at (571) 272-1114. The fax numbers for the organization where this application or proceeding is assigned is (571) 273-8300.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (571) 272-1700.

  
Caixia Lu, Ph. D.  
Primary Examiner  
February 3, 2006